



## THE IMPACT OF THE SCHENGEN SYSTEM IN THE CZECH REPUBLIC

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### 1. The Schengen system and the Czech Republic

The Czech Republic has agreed to adopt the *acquis communautaire* from chapter 24 (“Judicial and Police Co-operation, Schengen”) in all of its complexity. The only excepted clause is the one regarding the regime in Prague’s Ruzyně International Airport (an exception lasting until 2005). Therefore, the impact of the Schengen *acquis* on the Czech Republic can be analysed only in the context of the incorporation of the Schengen system into the 1<sup>st</sup> and 3<sup>rd</sup> Pillars of the European Union.

At the beginning of the 21<sup>st</sup> century the development of the *acquis* in the fields of visa, asylum and immigration policy is a dynamic process (with crucial deadline in 2004) Hence, the preparation of the Czech Republic in this field is an attempt to hit a moving target - or, more precisely, the target in the visa, asylum and immigration policy is even less stable than in other areas of the European integration.

The preparation of the Czech Republic has been already reflected by the modification of the Czech visa and immigration regimes. Major changes are concentrated in the following areas:

- Visa policy: Visa for a temporary short-term stay (up to 90 days) shall be harmonised as to their format, procedures, and the list of countries whose citizens are required to possess a visa. A new important instrument is the “Schengen visa” which is a visa issued by one Schengen state but authorising its holder to enter the territory of all Schengen states.
- Immigration policy: The impact of the Schengen *acquis* on the regime for long term stays (longer than 90 days) shall be less intensive since the regime for temporary long-term stays

has been not harmonised at the EU level yet.

- State borders regime: The changes at the state borders shall have a dual character. The first characteristic change, will be the removal of controls at the internal borders of the Schengen area – with a provision for their temporary reestablishment in the case of an emergency situation. The second change shall be a tightening of the control regime at the external borders of the Schengen area, including the duty to explore the Schengen Information System.

The chance that the Czech Republic shall become a full member of the Schengen area at the same time as it becomes the member of the European Union (i.e. by January 1, 2004), is very low. The enlargement of the EU shall simply not remove the border controls between the Czech Republic and the old member states. However, the Czech Republic will be under obligation to implement a significant part of the Schengen acquis by the date of its accession to the EU - the visa policy for instance. The causes for any postponement of Czech full participation in the Schengen system are predominantly from the side of the EU . The major problem/shortcoming is the contemporary Schengen Information System, which has been designed for eighteen states, and the enlargement would exceed its capacity. The new, more efficient, Schengen Information System II should be developed as late as in 2005 or 2006.

Whether the Czech Republic will be a fully integrated Schengen country, or not, will be crucial for determining the impact of the Schengen system on the Czech Republic. In other words, the Czech Republic shall be deeply interested in the decisions of Poland and the Slovak Republic whether they will enter to the Schengen area at the same time as the Czech Republic. The position of Slovakia is of particular interest to the Czech Republic due to the fact that the non-participation of Slovakia in the Schengen area could seriously endanger the preferential border and immigration relations between two states that currently exists.

## 2. General changes

Neither Schengen acquis nor Community law contain an explicit and unified definition of the term "stay" in relation to either the length of the stay and/or the status of the relevant foreigner. In contrast, the regimes and procedures necessary for a foreigner to enter the territory of a member state are governed by the Schengen acquis. The main instrument applied is the regulation of the short-term visa and their mutual recognition among Schengen states. In

the Czech visa and immigration system, the first step towards the Schengen standards has been made by the so called „European amendment“ of the Foreigners Act (Residence of Foreigners in the Territory of the Czech Republic Act No. 217/2002 Coll.). Firstly, the Czech Republic closed the gap in a system which permitted a holder of 90 days visa to stay up to 180 days in some cases.. Secondly, the amendment formally introduced a Czech Schengen visa and recognized Schengen visas issued by other Schengen member states. However, the applicability of the Schengen visa privileges are postponed until the date of Czech membership in the EU.

The Foreigners Act (in force since 2000) contains an internally structured system of visas issued by the Czech Republic: short term visa (visa for stay up to 90 days, transit visa, airport visa and exit visa) and long term visa authorising a stay not exceeding one year (long term visa are further differentiated in employment visa, student visa, visa for unification of family, tolerance visa and temporary protection visa).

The Foreigners Act is important for the adaptation of the Czech system to the EU standards particularly by distinguishing the foreigners in the Czech Republic into two categories: ”general foreigners“ v. EU citizens and their family members.

### 3. Changes for the EU citizens

EU citizens shall benefit from the simplification of immigration procedures. The changes are contained in the Foreigners Act amendment 2002. The preferential treatment of the EU citizens is, however, frozen until the Czech accession to the EU. Therefore, the partial preferential treatment of the EU citizens in the Czech Republic is presently based exclusively on the Association agreement (from the 90s) at present.

The ”European“ amendment of the Foreigners Act is inspired by the requirement of the Community acquis. It provides preferential treatment for not only EU citizens but for their family members as well. The Act defines a family member as the spouse, child under 21 years or a dependent relative in a direct ascendant or descendant genealogy line. In order to obtain a residence permit in the Czech Republic, a family member must provide a document confirming his/her family link to the EU citizens. Dependent relatives must additionally

provide a document confirming their dependent status. The Act does not declare explicitly that the preferential treatment covers also those family members who do not possess EU citizenship – even if the utmost reason of the regulation is to provide protection to non-EU citizens who are relatives of the EU citizens.

In the regards to documents for foreigners in the Czech Republic, the Foreigners Act retains several discrepancies. Family members of an EU citizen who also posses the EU citizenship, shall receive a special document for residence of the EU citizens. In contrast, the Czech authorities will provide a family member of the EU citizen who is not an EU citizen himself/herself only with a standard document for a foreigner from a non-EU state. This could create problems since those family members shall be treated differently from foreigners of other non-EU states – at least in terms of the documents received. Therefore, an idea of a special note or comment in documents of family members of the EU citizens is worth consideration. Additionally, a paradoxical point is present in the Act when the notification regime of the EU citizens is formally labelled as the approval regime.

#### 4. Changes for the Slovak citizens

Citizens of the Slovak Republic are preferred group of foreigners in Czech visa and residence policy. Temporary residence of Slovak citizens is governed by the agreement between two states which has mutually abolished visa requirements. The Foreigners Act, which implements the agreement, has introduced a notification regime only for Slovak citizens staying in the Czech Republic over 30 days – in contrast to standard permission regime applicable to other foreigners (for stays over 90 days). However, the preferential treatment of the Slovak citizens is limited for stays not exceeding one year and do not cover the regime of permanent residence.

The Czech Republic has not been criticised for the preferential treatment of Slovak citizens either by the European Commission or EU member states. In contrast, the “Report on the preparation of the Czech Republic to adopt Schengen acquis” and analysis of the implementation of the Czech-Slovak agreement on the abolition of the visa regime contain a statement which operates with a possibility for introducing a stricter regime.

Particular attention should be given to potential changes of Czech law caused by the Schengen and/or Community acquis in the case of a situation where Slovakia joins the EU (or Schengen area) later than the Czech Republic. The possibility of the survival of the privileged border regime is rather low in such situation. In contrast, the preferential treatment of the Slovak citizens in the area of immigration and employment policy seems to be compatible with Czech obligations under Schengen acquis. This interpretation is also supported by the opinion of the European Commission on the Czech Republic's preparation for the accession to the EU or, more precisely, by the absence of a critique therein. The motivation for the alteration of the current regime could arise from the misinterpretation on the Czech side and/or by the attempt to use the „Slovak card“ in the fight with competition of Slovak citizens in the Czech labour market.

The preferential regime on the Czech-Slovak border mentioned above is based on two principles. Citizens of both states can cross the border even outside the formal border crossings. The standard I.D. card („občanský průkaz“) is a sufficient document for this purpose. In contrast to the absence of critique regarding the treatment of Slovak citizens in immigration and labour law, the weakness of control of Czech –Slovak border has been widely criticised by European institutions. Therefore, the border regime is likely to be changed in such a way that the border could only be legally crossed at the checked border crossings.

**5. Based on the aforementioned debate, the European Policy Forum has formulated following conclusions and recommendations:**

**5.1. Slovakia's accession to the EU and to the Schengen area concurrently with the Czech Republic is Czech priority. Parallel accession of the Czech Republic and Slovakia would significantly reduce the cost for implementation of the Schengen acquis in the Czech Republic.**

**5.2. The preferential treatment of the Slovak citizens in the immigration and employment policy can survive even in a situation where Slovakia does not enter the EU (and/or the Schengen area) at the same time as the Czech Republic. Motivation for the alteration of the current regime could be caused by the misinterpretation on the Czech**

side and/or by the attempt to use a "Slovak card" in the fight with the competition of Slovak citizens in the Czech labour market.

**5.3. If the Slovak Republic does not enter the Schengen area at the same time as the Czech Republic, the border regime between two states will have to be modified significantly. In contrast to the current situation, the border will be allowed to be legally crossed only at established border crossings. This could create serious obstacles and difficulties to the inhabitants of the communities situated close to the border.**

**5.4. Even if Slovakia enters the Schengen area at the same time as the Czech Republic, the problems of implementation of the Schengen acquis in the Czech Republic shall not be solved automatically. Even then Czech international airports will be the external border of the Schengen area and the Czech Republic will have to adapt its visa and immigration system to the Schengen standards.**

**5.5. The European amendment of the Foreigners Act shall be modified. The major open questions are the construction of the immigration regime of the non-EU family members of the EU citizens and the removal of a paradoxical situation where the notification regime of the EU citizens is formally labelled as an approval regime.**

**5.6. The Czech Population should be informed in advance that the accession of the Czech Republic to the European Union does not mean the immediate and full accession to the Schengen area. The rationale of such an information campaign is to prevent the interpretation that the survival of the police controls on the Czech-German and Czech-Austrian borders after the EU enlargement, are a discriminatory measure from the old EU states.**